

REMARKS

Restriction Under 35 U.S.C. Section 121

The Examiner asserted a requirement for election of species under 35 U.S.C. Section 121. Applicant elects species I (corresponding to claims 2-5, 26-30, 57-59 and 68) with traverse from the list of species presented by the Examiner. Applicant traverses on the grounds that the Examiner has not issued a proper restriction requirement.

According to MPEP 808, "Every requirement to restrict has two aspects: (1) the reasons (as distinguished from the mere statement of conclusion) why the inventions as claimed are either independent or distinct, and (2) the reasons for insisting upon restriction therebetween as set forth in the following sections." Furthermore, MPEP 816 states that:

"The particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given."

The Examiner has asserted that the Applicant's claims correspond to patentably distinct species without giving reasons why they define independent or distinct inventions and without giving reasons for insisting upon restriction. Thus, the restriction requirement asserted by the Examiner is improper.

Applicants note that a restriction should be required only when it is proper under all applicable types of restriction practice.

In a general sense, Applicants note that the claims of Groups I-VII (under the generic claims 1 and 56) and the claims of Groups VIII-XI (under generic claim 32) have substantially the same limitations, and so Applicants respectfully submit that the division of the claim set according to these two species groups is not proper. For example, generic claim 32 has substantially the same limitations as claims 1, 2, 3, and 24 (in combination); Claim 39 (Group IX) has substantially the same limitations as claims 7, 8, and 62 (Group III); Claims 40 and 41 (Group X) have substantially the same limitations as claims 19 and 20 (Group VI); Claims 42-44 (Group X) have substantially the same limitations as claims 21-23 (Group VI), and so forth.

Applicants note that according to MPEP 803:

“Under the statute an application may properly be required to be restricted to one of two or more claimed inventions only if they are able to support separate patents and they are either independent or distinct.

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.”

and

“There are two criteria for a proper requirement for restriction between patentably distinct inventions:

- (A) The inventions must be independent or distinct as claimed; and
- (B) There must be a serious burden on the examiner if restriction is required.”

Applicants submit that a search related to the subject matter of Group I would also cover the claims 6 and 61 of Group II and so would not constitute an undue burden. In other words, Applicants submit that separate searches would not be required for Groups I and II. Thus, Applicants submit that the separation of Groups I and II into separate and distinct species is unnecessary, and that claims 6 and 61 should be included in Group I.

Furthermore, the Examiner has identified Group XII as a species, however, claims 31 and 50 are independent claims, and Group XII is not associated with any generic claim. Accordingly, Applicants submit that Group XII is an improper division of species. Moreover, Applicants submit that claim 31 of Group XII includes substantially the same limitations as claims 1, 2, and 3 of Group I (in combination), and so claim 31 reads on the elected species (Group I). Thus, Applicants submit that claim 31 should properly be included in Group I.

Applicants further submit that claim 50 of Group XII includes substantially the same limitations as claims 1 and 2 of Group I (in combination), and so claim 50 reads on the elected species (Group I). Thus Applicants submit that claim 50 should properly be included in Group I. Furthermore, since the limitations of claims 52-55 have substantially the same limitations as claims 27-30, claims 52-55 should also be included in Group 1. Applicants further submit that since claim 51 of Group XII has substantially the same limitations as claim 25 of Group V, claim 51 properly belongs in Group V.

CONCLUSION

The present amendment and response is believed to be a complete response to the issues raised in the office action in full reconsideration. A favorable reaction is respectfully requested. If the Examiner has any questions, comments or suggestions, the undersigned agent earnestly requests a telephone conference.

Respectfully submitted,



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